

## **EXHIBIT A**

**Filed Under Seal**

## **EXHIBIT B**

**Filed Under Seal**

## **EXHIBIT C**

**Filed Under Seal**

## **EXHIBIT D**

**Filed Under Seal**

## **EXHIBIT E**

**Filed Under Seal**

## **EXHIBIT F**

**Filed Under Seal**

## **EXHIBIT G**

**Filed Under Seal**

# **EXHIBIT H**

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Page 1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF WASHINGTON  
3                   AT SEATTLE

4

5 MICROSOFT CORPORATION, a

6 Washington corporation,

7 Plaintiff,

8 vs.               No. C10-1823-JLR

9 MOTOROLA, INC. MOTOROLA

10 MOBILITY, INC., and GENERAL

11 INSTRUMENT CORPORATION,

12 Defendants.

13

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14                   REVISED

15                   DEPOSITION OF HORACIO E. GUTIERREZ

16                   Taken on behalf of the Defendants

17                   April 4, 2012

18 BE IT REMEMBERED THAT, pursuant to the Washington Rules of  
19 Civil Procedure, the deposition of HORACIO E. GUTIERREZ, was  
20 taken before Tia B. Reidt, #2798, a Certified Shorthand  
21 Reporter, and a Notary Public for the State of Washington,  
22 on April 4, 2012, commencing at the hour of 9:08 a.m., the  
23 proceedings being reported at 315 5th Avenue South,  
24 Suite 1000, Seattle, Washington.

25 Job Number: 48313

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1 HORACIO E. GUTIERREZ

2 on the other hand, it wasn't necessarily a surprise.

3 Q. Do you recall what you did in the first instance  
4 upon receiving the October 21, 2010 letter?5 A. I believe I immediately forwarded it to the  
6 litigation team handling the Motorola litigation.7 Q. When you refer to the litigation team, are you  
8 referring to outside counsel or in-house counsel?9 A. It's -- within Microsoft, the litigation team is a  
10 separate group in the legal department that does not report  
11 to me. Even the patent litigation team is housed in the  
12 litigation department, as opposed to the intellectual  
13 property group. So I was referring to the in-house counsel  
14 that was handling the litigation in the litigation  
15 department at Microsoft.16 Q. Do you recall which individuals in the litigation  
17 team you're referring to?18 A. I only recall for sure one, David Kehoe, who was  
19 the person that at the time was my contact person in the  
20 litigation department on the matter. There may have been  
21 others, but that's the one that I recall specifically.22 Q. Did you perform any analysis of the patents  
23 identified in the annex to the October 21, 2010 letter?24 MR. PRITIKIN: Mr. Gutierrez, you can answer the  
25 question as to whether or not you performed an analysis, but

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1 HORACIO E. GUTIERREZ

2 the subject of what you did, the details of it, would be  
3 covered by the attorney-client and work-product privilege,  
4 so I would ask that you keep that in mind when giving your  
5 response.

6 THE WITNESS: I did not personally perform an  
7 analysis of those patents, but I do believe that the patent  
8 analysis team took on performing an analysis of them.

9 BY MR. SCHOENHARD:

10 Q. Do you know approximately when that analysis was  
11 performed?

12 A. I don't recall specifically, but generally that  
13 would have been in the weeks following the receipt of the  
14 letter.

15 Q. Do you know whether that analysis was performed  
16 prior to Microsoft filing the patent lawsuit for which we're  
17 -- or the lawsuit for which we're appearing here today, the  
18 RAND-based lawsuit?

19 A. I don't recall that specifically, no.

20 Q. Did Microsoft perform any financial valuation of  
21 Motorola's 802.11 standard-essential patent portfolio?

22 MR. PRITIKIN: I'll give you the same instruction  
23 on that. You can answer "yes" or "no" as to whether you  
24 know whether an analysis was done, but beyond that you  
25 should not provide any information concerning any work that

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1 HORACIO E. GUTIERREZ

2 Q. In response to receiving the October 21, 2010  
3 letter, did Microsoft investigate which of its products  
4 would be considered licensed under the offer in the  
5 October 21 letter?

6 MR. PRITIKIN: And that question also gets into the  
7 subject matter that may be privileged. You can answer the  
8 question "yes" or "no" or you don't recall based on your own  
9 personal knowledge, but you should not reveal the substance  
10 of any information that you received from lawyers relating  
11 to that subject.

12 THE WITNESS: Yes.

13 BY MR. SCHOENHARD:

14 Q. Did Microsoft determine that any of its products  
15 other than Xbox 360 related products would be considered  
16 802.11 compliant products under the terms of the offer of  
17 the October 21 letter?

18 MR. PRITIKIN: And I'm going to instruct the  
19 witness not to answer the question on grounds of  
20 attorney-client and work-product privilege.

21 MR. PALUMBO: Could you raise your voice a little  
22 bit? I'm having trouble hearing you.

23 MR. PRITIKIN: Sure.

24 Will you read back my objection?

25 THE COURT REPORTER: I'm having a little trouble

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1 HORACIO E. GUTIERREZ

2 hearing you, too.

3 MR. PRITIKIN: Is the microphone not --

4 THE COURT REPORTER: It's not very loud, no.

5 MR. PRITIKIN: I'm going to instruct the witness

6 not to answer the question on grounds of attorney-client and

7 work-product privilege.

8 MR. PALUMBO: Thank you.

9 BY MR. SCHOENHARD:

10 Q. As of October 21, 2010, were you personally aware  
11 of any Microsoft products other than the Xbox 360 that were  
12 802.11 compliant?13 MR. PRITIKIN: Now, this is a question that is  
14 outside the scope of the 30(b)(6) designation. Do you want  
15 to ask this in his personal capacity?

16 BY MR. SCHOENHARD:

17 Q. Let me rephrase.

18 As of October 21, 2010, did Microsoft sell any  
19 802.11 compliance products other than the Xbox 360 related  
20 products?

21 A. I don't know.

22 MR. PRITIKIN: And I think that is outside the  
23 scope of the 30(b)(6) topics, so we'll take that answer to  
24 be in his personal capacity, if that's something that you're  
25 interested in pursuing. Pursuant to a 30(b)(6) designation,

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2 We are going off the record.

3 (Pause in the proceedings.)

4 THE VIDEOGRAPHER: The time is 10:31.

5 We are going back on the record.

6 Proceed.

7 BY MR. SCHOENHARD:

8 Q. In response to receiving the October 21, 2010  
9 letter, did Microsoft investigate whether Motorola had  
10 offered a 2.25 percent royalty for its 802.11  
11 standard-essential patents to other parties?

12 A. I recall having asked whether we were aware of any  
13 previous --

14 MR. PRITIKIN: Mr. Gutierrez, you should not  
15 testify about any conversations you may have had with  
16 attorneys relating to the subject matter. So if you can  
17 answer the question without reference to conversations you  
18 had with counsel, that's fine; otherwise I would instruct  
19 you not to answer.

20 We specifically objected to the scope of the  
21 30(b) (6) notice insofar as it calls for privileged  
22 information.

23 THE WITNESS: Repeat the question, please.

24 BY MR. SCHOENHARD:

25 Q. In response to the October 21, 2010 letter, did

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1 HORACIO E. GUTIERREZ

2 Microsoft investigate whether Motorola had offered a  
3 2.25 percent royalty for its 802.11 standard-essential  
4 patents to other parties?5 A. I don't know how to answer that question without  
6 getting into the privilege issue.7 MR. PRITIKIN: Then you should not answer the  
8 question. I'll instruct you not to answer.

9 BY MR. SCHOENHARD:

10 Q. Are you able to answer that "yes" or "no" or "I  
11 don't know"?12 A. Yes, I think if that's fine from a privilege  
13 perspective.14 Q. In response to the October 21, 2010 letter, did  
15 Microsoft investigate whether Motorola had offered a  
16 2.25 percent royalty for its 802.11 standard-essential  
17 patents to any other parties? And you can answer "yes,"  
18 "no," or "I don't know."

19 A. Yes.

20 Q. Do you know what the results of that investigation  
21 were?22 MR. PRITIKIN: You can answer the question "yes" or  
23 "no" or you don't recall, but you shouldn't testify about  
24 any communications you had with counsel.

25 THE WITNESS: Yes.

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1 HORACIO E. GUTIERREZ

2 BY MR. SCHOENHARD:

3 Q. In response to the October 21, 2010 letter, did  
4 Microsoft learn that Motorola had offered a 2.25 percent  
5 royalty for its 802.11 standard-essential patents to other  
6 parties?

7 MR. PRITIKIN: Let me hear that question again.

8 (The following encompasses the entire readback  
9 portion.)

10 Q. In response to the October 21, 2010 letter, did  
11 Microsoft learn that Motorola had offered a 2.25 percent  
12 royalty for its 802.11 standard-essential patents to other  
13 parties?"

14 (Whereupon, the readback was concluded.)

15 MR. PRITIKIN: So Mr. Gutierrez, to the extent you  
16 received information from counsel or as part of the work  
17 product that was associated with the litigation, you should  
18 not answer the question. If he is asking you about  
19 conversations that you had with Mr. Daily or others at  
20 Motorola, you can testify about the conversations you had  
21 with the Motorola representatives.

22 THE WITNESS: I can't answer the question without  
23 reference to attorney work product conversations.

24 MR. PRITIKIN: Then I instruct you not to answer.

25 BY MR. SCHOENHARD:

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2 wouldn't have focused on these areas specifically.

3 Q. In response to receiving the October 21, 2010  
4 letter, did Microsoft endeavor to determine whether each of  
5 the patents listed in the annex to the October 21 letter is  
6 in fact essential to the 802.11 standard?7 MR. PRITIKIN: And again, this gets into the  
8 subject matter of work-product and attorney-client  
9 privilege. If you would need to reveal communications you  
10 had with counsel to answer the question, then I'm going to  
11 instruct you not to answer.12 THE WITNESS: I cannot answer the question without  
13 alluding to conversations with counsel.14 MR. PRITIKIN: You should not get into that subject  
15 matter.

16 BY MR. SCHOENHARD:

17 Q. Are you able to answer that question "yes" or "no"  
18 or "I don't know"?

19 MR. PRITIKIN: Let me hear the question again.

20 MR. SCHOENHARD: Perhaps it would be easier if I  
21 restated it.

22 BY MR. SCHOENHARD:

23 Q. In response to receiving the October 21, 2010  
24 letter, did Microsoft endeavor to determine whether each of  
25 the patents or patent applications listed in the annex to

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1 HORACIO E. GUTIERREZ

2 the October 21 letter is in fact essential to the 802.11  
3 standard?4 MR. PRITIKIN: And I think that intrudes on the  
5 attorney-client work-product privilege, and I'm going to  
6 instruct the witness not to answer based on what he told us  
7 a few minutes ago.8 MR. SCHOENHARD: You will not permit the witness to  
9 answer "yes" or "no"?

10 MR. PRITIKIN: No.

11 BY MR. SCHOENHARD:

12 Q. The October 21, 2010 letter states in its second  
13 paragraph, "As a convenience to its licensees, Motorola  
14 includes all of the patents listed on its 802.11 annex in  
15 the license without regard to further proof of technical  
16 essentiality to the 802.11 standards."

17 Do you see that?

18 A. Yes.

19 Q. Did you understand that statement to imply that  
20 some of the patents identified in the annex to the October  
21 21, 2010 letter may not in fact have been essential to the  
22 802.11 standards?

23 A. No, I did not.

24 Q. What did you understand that statement to mean?

25 A. Well, I believe the statement says that they

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1 HORACIO E. GUTIERREZ

2 information in the attachment hasn't been the focus of  
3 specific discussions between the companies, the two  
4 companies.5 In the context of the negotiation, we've talked  
6 generally about the components that would be in or out of  
7 the license. And at different times the patent portfolios  
8 in the field have come in and out of the scope as the two  
9 parties have made an effort to explore a satisfactory  
10 resolution of the disputes.11 Q. In response to receiving the October 29, 2010  
12 letter, did Microsoft perform a financial valuation of  
13 Motorola's H.264 patent portfolio?14 MR. PRITIKIN: We're getting into the same subject  
15 we did before. You should not reveal any communications  
16 that you had with counsel. If you can't answer the question  
17 without getting into discussions with counsel, then I would  
18 instruct you not to answer.19 THE WITNESS: Would you repeat the question? I'm  
20 sorry.

21 BY MR. SCHOENHARD:

22 Q. In response to receiving the October 29, 2010  
23 letter, did Microsoft perform a financial valuation of  
24 Motorola's H.264 patent portfolio?

25 A. I'm not aware of that.

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1 HORACIO E. GUTIERREZ

2 Q. In response to receiving the October 29, 2010  
3 letter, did Microsoft perform an analysis of the  
4 essentiality of any of the patents identified in the annex  
5 to the October 29 letter?

6 MR. PRITIKIN: In answering the question, you  
7 should not testify about matters that may or may not have  
8 been performed by counsel. You can answer the question with  
9 respect to what you personally did.

10 THE WITNESS: Okay. I did not personally perform  
11 that analysis.

12 MR. PRITIKIN: Okay.

13 BY MR. SCHOENHARD:

14 Q. In response to receiving the October 29th, 2010  
15 letter, did Microsoft perform an analysis of the  
16 essentiality of the patents identified in the annex to the  
17 October 29 letter?

18 MR. PRITIKIN: The same instruction. I'm going to  
19 object to that to the extent that it encompasses work that  
20 was done by lawyers. Again, you can testify about what you  
21 did personally. You should not testify about what counsel  
22 did in connection with the litigation.

23 THE WITNESS: So I already testified personally on  
24 the issue, and I don't believe I can go further without  
25 answering into attorney-work product.

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1 HORACIO E. GUTIERREZ

2 MR. PRITIKIN: Then you should not do so.

3 MR. SCHOENHARD: Just to try and speed things up a  
4 bit, Mr. Pritikin, it would be helpful if you try to limit  
5 your objection to the basis for it and a brief instruction  
6 to the witness.7 If the two of you need to confer off the record to  
8 determine whether and to what extent we are approaching into  
9 privileged matter, I'm always welcome, of course, to go off  
10 the record if need be. But it would be helpful if we could  
11 try to get a briefer instruction so that we can keep moving  
12 forward.13 MR. PRITIKIN: It's pretty hard to do it when  
14 you're getting into privileged subject matter, but we'll  
15 take it question by question.

16 BY MR. SCHOENHARD:

17 Q. In response to receiving the October 29, 2010  
18 letter, did Microsoft investigate whether Motorola had  
19 previously offered a 2.25 percent royalty rate to other  
20 parties?21 MR. PRITIKIN: Again, the same instruction,  
22 Mr. Gutierrez. You should not testify about any work that  
23 was done by counsel in connection with the litigation or the  
24 anticipated litigation. You can testify as to what you  
25 personally did or did not do.

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1 HORACIO E. GUTIERREZ

2 THE WITNESS: I did not personally conduct such an  
3 investigation.

4 BY MR. SCHOENHARD:

5 Q. Can you answer with respect to whether Microsoft  
6 conducted such an investigation?

7 MR. PRITIKIN: Same instruction.

8 THE WITNESS: Not without getting into privilege  
9 issues.

10 BY MR. SCHOENHARD:

11 Q. Did Microsoft investigate which of its products  
12 would be impacted by the proposed license in the October 29  
13 letter?14 MR. PRITIKIN: I'm going to instruct the witness  
15 not to answer the question on grounds of attorney-client  
16 work-product privilege.

17 BY MR. SCHOENHARD:

18 Q. In response to receiving the October 29, 2010  
19 letter, did Microsoft investigate what portion of its patent  
20 portfolio would be subject to proposed grant-back?

21 MR. PRITIKIN: Same instruction.

22 THE WITNESS: Unfortunately, this is a field in  
23 which, you know, my knowledge all derives from discussions  
24 with in-house and outside counsel on a topic that I believe  
25 would be the subject of attorney work-product privilege.

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1 HORACIO E. GUTIERREZ

2 MR. PRITIKIN: You should not testify about that.

3 MR. PALUMBO: Let's take a quick break.

4 MR. SCHOENHARD: Let's go ahead and take a quick  
5 break.

6 THE VIDEOGRAPHER: The time is 11:16.

7 We are going off the record.

8 Here marks the end of Tape No. 1 in the video  
9 deposition of Horacio Gutierrez.

10 (Pause in the proceedings.)

11 THE VIDEOGRAPHER: The time is 11:28.

12 We are going back on the record.

13 Here marks the beginning of Tape No. 2 in the video  
14 deposition of Horacio Gutierrez.

15 Proceed.

16 BY MR. SCHOENHARD:

17 Q. Earlier, if I heard you correctly, you referred to  
18 the 2.25 percent royalty rate offered in the October 29,  
19 2010 letter as an additional 2.25 percent.

20 What did you mean by "additional 2.25 percent"?

21 A. I meant that -- sorry. I meant that I understood  
22 the letter to state that that would be a net royalty rate  
23 that we would pay to Motorola on top of a cross-licensing of  
24 the -- in that case in our conversation really related to  
25 the 802.11 portfolio.

# **EXHIBIT I**

---

**From:** Robbins, Ellen S. [mailto:[erobbins@Sidley.com](mailto:erobbins@Sidley.com)]  
**Sent:** Wednesday, March 21, 2012 2:34 PM  
**To:** Post, Kevin; Giardina, David C.; [chrisw@dhlt.com](mailto:chrisw@dhlt.com)  
**Cc:** Project-MS/Moto\_WDWA\_343/1823; RopesWashington1823 (Microsoft/Motorola); Pepe, Steven; [summit1823@summitlaw.com](mailto:summit1823@summitlaw.com)  
**Subject:** RE: Summary of Meet and Confer

Kevin,

In addition to being deposed in his individual capacity as you had requested, Mr. Gutierrez will be Microsoft's 30(b)(6) witness on at least Topics 8 and 9 of Motorola's 30(b)(6) deposition notice. Please note that Mr. Gutierrez has a full schedule, and if Motorola does not proceed with his deposition on Monday, we cannot guarantee that he will be available again in the near future. Accordingly, we urge Motorola to proceed with his deposition on Monday afternoon as offered.

We are working on securing a date for Amy Marasco, who is traveling overseas, and will get back to you as soon as possible.

***Ellen S. Robbins***  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
Phone: (312) 853-2931  
Fax: (312) 853-7036  
E-mail: [erobbins@sidley.com](mailto:erobbins@sidley.com)

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**From:** Post, Kevin [<mailto:Kevin.Post@ropesgray.com>]  
**Sent:** Wednesday, March 21, 2012 3:37 PM  
**To:** Robbins, Ellen S.; Giardina, David C.; [chrisw@dhlt.com](mailto:chrisw@dhlt.com)  
**Cc:** Project-MS/Moto\_WDWA\_343/1823; RopesWashington1823 (Microsoft/Motorola); Pepe, Steven; [summit1823@summitlaw.com](mailto:summit1823@summitlaw.com)  
**Subject:** RE: Summary of Meet and Confer

Ellen,

In light of the testimony provided by Neill Taylor yesterday, Motorola is willing to de-prioritize Mr. Gutierrez's deposition for the time being.

We are hopeful that we can confirm Mr. Hachamovitch's deposition date shortly.

Finally, we note that we have not yet received any dates for Amy Marasco (despite that fact that we first requested her deposition over two weeks ago). As we indicated during last Friday's meet and confer, and

confirmed via email on Sunday, Ms. Marasco is a high-priority witness and we request, again, dates on which she is available for deposition.

Thanks,  
Kevin

**Kevin J. Post**  
**ROPEs & GRAY LLP**

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**From:** Robbins, Ellen S. [\[mailto:erobbins@Sidley.com\]](mailto:erobbins@Sidley.com)  
**Sent:** Tuesday, March 20, 2012 7:53 PM  
**To:** Post, Kevin; Giardina, David C.; [chrisw@dhl.com](mailto:chrisw@dhl.com)  
**Cc:** Project-MS/Moto\_WDWA\_343/1823; RopesWashington1823 (Microsoft/Motorola); Pepe, Steven; [summit1823@summitlaw.com](mailto:summit1823@summitlaw.com)  
**Subject:** Re: Summary of Meet and Confer

Kevin,  
Horacio Gutierrez will be available for his deposition on Monday, March 26 in Seattle. We anticipate this would be a half day deposition. Please confirm as soon as possible. Thank you.

---

**From:** Post, Kevin [\[mailto:Kevin.Post@ropesgray.com\]](mailto:Kevin.Post@ropesgray.com)  
**Sent:** Monday, March 19, 2012 12:29 PM  
**To:** Robbins, Ellen S.; Giardina, David C.; Chris Wion <[chrisw@dhl.com](mailto:chrisw@dhl.com)>  
**Cc:** Project-MS/Moto\_WDWA\_343/1823; RopesWashington1823 (Microsoft/Motorola) <[RopesWashington1823-Microsoft\\_Motorola@ropesgray.com](mailto:RopesWashington1823-Microsoft_Motorola@ropesgray.com)>; Pepe, Steven <[Steven.Pepe@ropesgray.com](mailto:Steven.Pepe@ropesgray.com)>; Summit1823 <[Summit1823@SummitLaw.com](mailto:Summit1823@SummitLaw.com)>  
**Subject:** RE: Summary of Meet and Confer

Counsel,

In addition to the witnesses previously identified, Motorola requests potential dates for the deposition of Horacio Gutierrez. Please prioritize this witness, along with dates for Amy Marasco.

Regards,  
Kevin

**Kevin J. Post**  
**ROPEs & GRAY LLP**

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**From:** Post, Kevin  
**Sent:** Sunday, March 18, 2012 11:08 AM  
**To:** Robbins, Ellen S.; Giardina, David C.; Chris Wion  
**Cc:** Project-MS/Moto\_WDWA\_343/1823; RopesWashington1823 (Microsoft/Motorola); Pepe, Steven; Summit1823  
**Subject:** Summary of Meet and Confer

Ellen, Dave and Chris,

Thank you for a productive meet and confer on Friday.

You proposed that we de-prioritize the deposition of Mr. Shively, given his recent (July 2011) transition to the Corporate Standards Group. In his place, Mr. Heiner would be deposed March 28. We agreed to do so, pending the deposition of Mr. Heiner and a review of any documents related to Mr. Shively. As we agreed, we would revisit the need for Mr. Shively's deposition at that time.

With respect to Ms. Gordon, we agreed to de-prioritize her deposition pending consideration of the terms of her departure from Motorola/Motorola Solutions and any employment agreement she has with Microsoft. We can revisit her deposition after these issues have been considered.

With respect to Microsoft's Third Amended 30(b)(6) Notice of Deposition, we indicated that Mr. Taylor would be designated for Topics 1, 2, 7, 10, 11, 12, and 14, subject to Motorola's Objections. Based on the agreement reached between the parties, however, Topics 1, 2, 11, and 12 will now be treated as interrogatories.

Finally, we discussed a prioritization of the witnesses and topics for which Motorola has requested deposition. We indicated that Ms. Marasco was a high-priority witness and we will provide you with any additional names, along with a list of high-priority deposition topics, over the weekend.

Please let me know if you have any disagreement with this summary.

Thanks,  
Kevin

**Kevin J. Post**  
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communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

\*\*\*\*\*  
\*\*\*\*\*

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# **EXHIBIT J**

1 The Honorable James L. Robart  
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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 MICROSOFT CORPORATION,

9 Plaintiff,

10 v.

11 MOTOROLA, INC., and MOTOROLA  
12 MOBILITY, INC.,

13 Defendants.

14 CASE NO. C10-1823 JLR

15 DEFENDANT MOTOROLA MOBILITY,  
16 INC.'S NOTICE OF DEPOSITION OF  
17 MICROSOFT CORPORATION

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25  
26  
DEFENDANT MOTOROLA MOBILITY, INC.'S NOTICE OF  
DEPOSITION OF MICROSOFT CORPORATION - 1  
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC  
315 FIFTH AVENUE SOUTH, SUITE 1000  
SEATTLE, WASHINGTON 98104-2682  
Telephone: (206) 676-7000  
Fax: (206) 676-7001

1 PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), Fed. R. Civ. P., Motorola  
2 Mobility, Inc. ("Motorola Mobility") will take the deposition upon oral examination of Microsoft  
3 Corporation ("Microsoft") on the topics set forth in the attached Schedule A, through one or more  
4 of its officers, directors, or managing agents, or other persons who consent to testify on  
5 Microsoft's behalf, commencing on March 13, 2012, at 9:00 AM. Motorola Mobility requests that  
6 Microsoft identify in writing at least five (5) business days in advance of the deposition the  
7 person(s) designated by Microsoft to testify on its behalf, the job title of each such person(s), and  
8 the topic(s) on which each such person(s) will testify. Each such designated person is requested to  
9 bring with him/her all documents upon which that person relies or any documents which he/she  
10 has consulted in preparation for deposition in this matter.

11 The deposition will take place at the offices of the Summit Law Group PLLC, 315 Fifth  
12 Avenue South, Suite 1000, Seattle, Washington 98104-2682, beginning on the date and time  
13 specified above, or at such other time and place as may be agreed to by counsel. The deposition  
14 will be taken before an officer authorized to administer oaths by the laws of the United States and  
15 will be recorded by stenographic, audio and/or videographic means. The deposition will continue  
16 from day to day until completed, with such adjournments as to time and place that may be  
17 necessary.

18 DATED this 6th day of March, 2012.

19 SUMMIT LAW GROUP PLLC

20 By \_\_\_\_\_  
21

Ralph H. Palumbo, WSBA #04751  
Philip S. McCune, WSBA #21081  
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22  
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24  
25  
26  
DEFENDANT MOTOROLA MOBILITY, INC.'S NOTICE OF  
DEPOSITION OF MICROSOFT CORPORATION - 1  
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC  
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1 And by

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29  
30 *Attorneys for Defendants Motorola Solutions,*  
31 *Inc., Motorola Mobility, Inc., and General*  
32 *Instrument Corporation*

## **SCHEDULE A**

## DEFINITIONS AND INSTRUCTIONS

3 Motorola incorporates by reference in each of the requests below the definitions and  
4 instructions set forth in Defendant Motorola Mobility, Inc.'s January 27, 2011 First Set and  
5 October 21, 2011 Second Set of Interrogatories and Requests for Production to Microsoft  
6 Corporation, as well as the following definitions and instructions used herein.

## DEFINITIONS

1. “IPR” means “intellectual property rights.”
2. “SSO” means “SDO,” as defined in Motorola Mobility’s January 27, 2011

10 discovery requests.

3. "ETSI" means European Telecommunications Standards Institute.

4. "Marvell" refers collectively and individually to Marvell Semiconductor Inc., and  
predecessors or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries,  
affiliates thereof, and all officers, agents, employees, counsel and other persons acting on its  
or any other person or entity subject to Marvell Semiconductor Inc.'s control, or which  
is Marvell Semiconductor Inc.

17        5.        “Affiliate” means with respect to a specified Entity, any Entity that directly, or  
18        indirectly through one or more intermediaries, controls, is controlled by, or is under common  
19        control with, the specified Entity, now, or at any time hereafter, but such Entity shall be deemed to  
20        be an Affiliate of the specified Entity only so long as such control exists. For purposes of this  
21        definition, (i) “control” (including the terms “controlling,” “controlled by,” and “under common  
22        control with”) means the possession, direct or indirect of the power to direct or cause the direction  
23        of the management and policies of any Entity, whether through ownership of more than fifty  
24        percent (50%) of the voting securities or more than fifty percent (50%) of the ownership interest  
25        representing the right to make decisions for such Entity, by contract or otherwise, and (ii) “Entity”  
26        means any legal entity including a corporation, association, partnership, business trust, joint

DEFENDANT MOTOROLA MOBILITY, INC.'S NOTICE OF  
DEPOSITION OF MICROSOFT CORPORATION - 3  
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SEATTLE, WASHINGTON 98104-2682  
Telephone: (206) 676-7000  
Fax: (206) 676-7001

1 venture, or sole proprietorship, governmental organization or body, or any agency, department or  
2 instrumentality thereof, and includes a natural person.

3       6.       “MOSAID” refers collectively and individually to MOSAID Technologies Inc.,  
4 and all its predecessors or successors (merged, acquired, or otherwise), parents, divisions,  
5 subsidiaries, and affiliates thereof, and all officers, agents, employees, counsel and other persons  
6 acting on its behalf, or any other person or entity subject to MOSAID Technologies Inc.’s control,  
7 or which controls MOSAID Technologies Inc.

8       7.       “Nokia” refers collectively and individually to Nokia Corp., and all its predecessors  
9 or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries, and affiliates  
10 thereof, and all officers, agents, employees, counsel and other persons acting on its behalf, or any  
11 other person or entity subject to Nokia Corp.’s control, or which controls Nokia Corp.

12       8.       “Core Wireless” refers collectively and individually to Core Wireless Licensing  
13 S.a.r.l., and all its predecessors or successors (merged, acquired, or otherwise), parents, divisions,  
14 subsidiaries, and affiliates thereof, and all officers, agents, employees, counsel and other persons  
15 acting on its behalf, or any other person or entity subject to Core Wireless Licensing S.a.r.l.’s  
16 control, or which controls Core Wireless Licensing S.a.r.l.

17       9.       “Apple” refers collectively and individually to Apple Inc., and all its predecessors  
18 or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries, and affiliates  
19 thereof, and all officers, agents, employees, counsel and other persons acting on its behalf, or any  
20 other person or entity subject to Apple Inc.’s control, or which controls Apple Inc.

21       10.       “Cisco” refers collectively and individually to Cisco Systems, Inc., and all its  
22 predecessors or successors (merged, acquired, or otherwise), parents, divisions, subsidiaries, and  
23 affiliates thereof, and all officers, agents, employees, counsel and other persons acting on its  
24 behalf, or any other person or entity subject to Cisco Systems, Inc.’s control, or which controls  
25 Cisco Systems, Inc.

26

## TOPICS

1. Microsoft's Corporate Standards & Antitrust Group and its organizational structure and composition for the past 3 years, including an explanation and identification of each individual employee within the Corporate Standards Group, and each individual's title and job responsibilities.
2. The factual bases for and all evidence supporting Microsoft's contention at ¶ 86 of its February 23, 2011 Amended and Supplemental Complaint that it "has been injured in its business or property, including damages associated with the cost of defending the improperly filed Motorola Patent Actions, and is otherwise threatened by imminent loss of profits, loss of customers and potential customers, and loss of goodwill and product image."
3. The factual bases for and all evidence supporting Microsoft's contention at ¶ 87 of its February 23, 2011 Amended and Supplemental Complaint that it "has suffered damages and irreparable harm, and will suffer further damage and irreparable harm, by reason of each and all of the acts, practices, breaches and conduct of Defendants alleged above until and unless the Court enjoins such acts, practices, and conduct."
4. The factual bases for and all evidence supporting Microsoft's contention at ¶ 89 of its February 23, 2011 Amended and Supplemental Complaint that Motorola "made a clear and definite promise to potential licensees through their commitments to IEEE and the ITU that they would license any essential patents under reasonable rates, with reasonable terms, and on a non-discriminatory basis."
5. The factual bases for and all evidence supporting Microsoft's contention at ¶ 91 of its February 23, 2011 Amended and Supplemental Complaint that it "developed and marketed its products and services in reliance on Defendants' promises," including without limitation all facts supporting Microsoft's allegations that it relied on Motorola's RAND assurances in implementing 802.11 and H.264 functionality in its products.
6. The factual bases for and all evidence supporting Microsoft's contention at ¶ 93 of its February 23, 2011 Amended and Supplemental Complaint that it "has been harmed as a result of its reasonable reliance on Defendants' promises and is threatened by the imminent loss of profits, loss of customers and potential customers, and loss of goodwill and product image."
7. The factual bases for and all evidence supporting Microsoft's contention at ¶ 94 of its February 23, 2011 Amended and Supplemental Complaint that it "will suffer irreparable injury by reason of the acts and conduct of Defendants alleged above until and unless the court enjoins such acts, practices, and conduct."
8. A description and explanation of all actions Microsoft took in response to receiving Motorola's October 21, 2010 offer letter, including any financial or technical analyses of the value of Motorola and/or Microsoft's 802.11-essential patent portfolio.

- 1 9. A description and explanation of all actions Microsoft took in response to receiving
- 2 Motorola's October 29, 2010 offer letter, including any financial or technical analyses of
- 3 the value of Motorola and/or Microsoft's H.264-essential patent portfolio.
- 4 10. All facts, if any, showing that Microsoft is an "applicant" with respect to Motorola's
- 5 802.11-essential patent portfolio, as described in Motorola's IEEE letters of assurance
- 6 (MOTM\_WASH1823\_0000001-34).
- 7 11. All facts, if any, showing that Microsoft is an "applicant" with respect to Motorola's
- 8 H.264-essential patent portfolio, as described in Motorola's ITU letters of assurance
- 9 (MOTM\_WASH1823\_0000035-77).
- 10 12. All facts supporting Microsoft's understanding of the scope and meaning of Motorola's
- 11 RAND commitments to the ITU and IEEE, including without limitation an explanation of
- 12 which of Motorola's letters of assurance obligate Motorola to license each of the patents
- 13 included in its October 2010 letters on RAND terms.
- 14 13. All facts supporting Microsoft's contention that Motorola's RAND commitments to the
- 15 ITU and IEEE required that the terms included in Motorola's October 2010 offer letters be
- 16 RAND-compliant.
- 17 14. All facts supporting each of the contentions in Microsoft's November 29, 2011
- 18 supplemental response to Motorola's Interrogatory No. 6 regarding the appropriate method
- 19 for the determination of a RAND royalty rate in a RAND license.
- 20 15. All facts supporting Microsoft's contention that a RAND commitment to an SSO reflects
- 21 the patent holder's agreement not to exclude others from using patent(s) that are subject to
- 22 this RAND commitment to practice the relevant standard.
- 23 16. All facts supporting Microsoft's contention that licenses to RAND-committed patents for
- 24 the 802.11 standard should be available on "a nominal cost basis."
- 25 17. All facts supporting Microsoft's contention that licenses to RAND-committed patents for
- 26 the H.264 standard should be available on "a nominal cost basis."
18. Microsoft's understanding of all of the terms and conditions that would be included in a
- RAND license between Motorola and Microsoft, including without limitation a list of all
- such terms and conditions, the contents of such terms and conditions, and the effect, if any,
- that each such term or condition would have on any royalty rate.
19. For each of Motorola's 802.11-essential patents, an explanation of how to determine the
- incremental value of each patent over and above the value of alternatives to each patent
- and the processes specified by the standard.

- 1 20. For each of Motorola's H.264-essential patents, an explanation of how to determine the  
2 incremental value of each patent over and above the value of alternatives to each patent  
2 and the processes specified by the standard.
- 3 21. For each of Microsoft's 802.11-essential patents, the description and circumstances  
4 regarding whether or not each patent has been licensed to another party as the result of a  
5 bilateral negotiation and any royalties received for each patent pursuant to any bilaterally  
5 negotiated license agreements.
- 6 22. For each of Microsoft's 802.11-essential patents, the description and circumstances  
7 regarding whether or not each patent has been licensed to another party as the result of a  
7 bilateral negotiation and any royalties received for each patent pursuant to any bilaterally  
8 negotiated license agreements.
- 9 23. The factual background and circumstances regarding each of the licenses identified in  
10 Microsoft's November 29, 2011 supplemental response to Motorola's Interrogatory No.  
10, including without limitation an identification of the relevant patent policies or  
11 provisions upon which Microsoft bases its contention that these licenses were granted on  
11 RAND terms and conditions.
- 12 24. The factual background and circumstances regarding Microsoft's April 10, 2009 patent  
13 license agreement with CSIRO (MS-MOTO\_1823\_00005195128-52), including any  
14 RAND analysis performed by Microsoft prior to entering into that agreement or attempt by  
14 Microsoft to determine the incremental value of the licensed patents over and above the  
15 value of alternatives to each patent.
- 16 25. The factual background and circumstances regarding Microsoft's relationship with Florian  
17 Mueller, including whether Mr. Mueller has entered into any agreement with Microsoft,  
17 the terms and conditions of any such agreement, the individuals at Microsoft that  
18 correspond and communicate with Mr. Mueller, the purposes of those communications, the  
18 frequency of those communications, and the dates of those communications.
- 19 26. Statements made to Florian Mueller by Microsoft or any of its attorneys, representatives  
20 or agents concerning Motorola.
- 21 27. The compensation (financial or otherwise) that Florian Mueller has received from  
21 Microsoft since 2010.
- 22 28. An explanation and description of the circumstances under and purposes for which  
23 Microsoft commissioned Florian Mueller to perform his "study on the worldwide use of  
23 FRAND-committed patents" detailed at <http://fosspatents.blogspot.com/2011/10/study-on-worldwide-use-of-frand.html>.
- 25 29. The factual background and circumstances concerning the drafting of and decision to send  
26 the June 14, 2011 letter sent by Amy Marasco and David Heiner on behalf of Microsoft to  
the Federal Trade Commission (MOTM\_WASH1823\_0054670-86).

- 1 30. An identification of all currently available and planned Microsoft products that comply (or  
2 are planned to comply) with the 802.11 standard, including but not limited to Xbox  
3 consoles or adapters, computers, laptops, tablets, smartphones, WiFi hotspots, routers, etc.
- 4 31. For each currently available and planned Microsoft product that complies (or are planned  
5 to comply) with the 802.11 standard, all facts regarding Microsoft's knowledge of the  
importance or use of the standard by that product's users, including without limitation  
consumer surveys, feedback or other usage statistics.
- 6 32. An identification of all currently available and planned Microsoft products that comply (or  
7 are planned to comply) with the H.264 standard, including but not limited to Xbox  
8 consoles or adapters, computers, laptops, tablets, smartphones, WiFi hotspots, routers, etc.
- 9 33. For each currently available and planned Microsoft product that complies (or are planned  
10 to comply) with the H.264 standard, all facts regarding Microsoft's knowledge of the  
importance or use of the standard by that product's users, including without limitation  
consumer surveys, feedback, or other usage statistics.
- 11 34. The factual background and circumstances surrounding Microsoft's decision to become a  
12 licensor to the MPEG LA AVC/H.264 patent pool.
- 13 35. The factual background and circumstances surrounding any decision by Microsoft to not  
14 become a licensor or licensee to the Via Licensing 802.11 patent pool.
- 15 36. A description of all facts and circumstances regarding the publishing of the statement titled  
16 "Microsoft's Support For Industry Standards" (<http://www.microsoft.com/about/legal/en/us/IntellectualProperty/iplicensing/ip2.aspx>) on February 8, 2012, including without  
17 limitation an identification of all persons involved in or consulted with regarding the  
content or decision to publish the statement and all communications (prior or subsequent to  
February 8, 2012) relating to or concerning the statement and/or its contents.
- 18 37. An explanation of the nature of the relationship and any communications between  
19 Microsoft and Apple regarding Apple's November 11, 2011 letter to ETSI regarding the  
licensing of standards-essential patents, which may be found at  
20 [http://www.appleinsider.com/articles/12/02/07/apple\\_asks\\_etsi\\_standards\\_body\\_to\\_set\\_rules\\_for\\_standards\\_essential\\_patents.html](http://www.appleinsider.com/articles/12/02/07/apple_asks_etsi_standards_body_to_set_rules_for_standards_essential_patents.html).
- 21 38. An explanation of the nature of the relationship and any communications between  
22 Microsoft and Cisco regarding Cisco's January 31, 2012 letter to ETSI regarding the  
licensing of standards-essential patents, which may be found at  
23 [http://www.appleinsider.com/articles/12/02/08/cisco\\_backs\\_apples\\_etsi\\_request\\_for\\_fair\\_and\\_open\\_licensing\\_of\\_standards\\_patents.html](http://www.appleinsider.com/articles/12/02/08/cisco_backs_apples_etsi_request_for_fair_and_open_licensing_of_standards_patents.html).
- 24 39. An explanation of the relationship and communications between Marvell and/or its counsel  
25 with Microsoft and/or its counsel concerning each of the following: (1) Microsoft's request  
26 that Marvell indemnify Microsoft for possible infringement of any of Motorola's 802.11

1       patents; (2) Microsoft's request that Marvell seek a patent license for any of Motorola's  
2       802.11 patents; (3) ITC Investigation No. 337-TA-752; and (4) Motorola, including any  
      license negotiations or discussions between Motorola and Marvell.

3       40. The factual background and circumstances behind all of the patent license agreements that  
4       Microsoft has granted on what Microsoft believes to be RAND terms, including without  
5       limitation the patent license agreements Microsoft offers pursuant to its Open Specification  
6       Promise, Community Promise, Interoperability Principles or as part of Microsoft's  
      Interoperability Program, as detailed on Microsoft web site [http://www.microsoft.com/](http://www.microsoft.com/openspecifications/en/us/programs/default.aspx)  
6       openspecifications/en/us/programs/default.aspx.

7       41. An explanation of the relationship and communications or agreements between Microsoft  
8       and MOSAID or its Affiliates regarding patent licensing or patent transfer, and any  
9       royalties or revenue obtained or expected to be obtained by Microsoft from MOSAID or its  
      Affiliates.

10       42. An explanation of the relationship and communications or agreements between Microsoft  
11       and Nokia or its Affiliates regarding patent licensing or patent transfer, and any royalties or  
      revenue obtained or expected to be obtained by Microsoft from Nokia or its Affiliates.

12       43. An explanation of the relationship and communications or agreements between Microsoft  
13       and Core Wireless or its Affiliates regarding patent licensing or patent transfer, and any  
14       royalties or revenue obtained or expected to be obtained by Microsoft from Core Wireless  
      or its Affiliates.

## CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true and correct copy of the foregoing Defendant Motorola Mobility, Inc.'s Notice of Deposition of Microsoft Corporation to Microsoft Corporation via electronic mail on counsel of record below.

Arthur W. Harrigan, Jr., Esq.  
Christopher T. Wion, Esq.  
Shane P. Cramer, Esq.  
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Richard A. Cederoth, Esq.  
Sidley Austin LLP  
*rcederoth@sidley.com*

DATED this 6th day of March, 2012.

Marcia A. Ripley

# **EXHIBIT K**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION, )  
v. Plaintiff, ) CASE NO. C10-01823JLR  
MOTOROLA INC., et al., ) SEATTLE, WASHINGTON  
Defendant. ) June 25, 2013  
 ) TELEPHONE CONFERENCE  
 )

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES L. ROBART  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiff: ARTHUR HARRIGAN

For the Defendant: BRIAN CANNON

Reported by: NANCY L. BAUER, CCR, RPR  
Federal Court Reporter  
700 Stewart Street, Suite 17205  
Seattle, WA 98101  
(206) 370-8506  
nancy.bauer@wawd.uscourts.gov

1 June 25, 2013

3:00 p.m.

2 PROCEEDINGS

---

3 THE COURT: Good afternoon, counsel. This is Judge  
4 Robart.

5 MR. HARRIGAN: Good afternoon, Your Honor.

6 THE COURT: Mr. Harrigan.

7 MR. PALUMBO: Good afternoon, Your Honor.

8 THE COURT: Mr. Palumbo.

9 Counsel, who is going to be speaking for the parties  
10 today?11 MR. HARRIGAN: Art Harrigan for Microsoft, Your  
12 Honor.13 MR. PALUMBO: Your Honor, this is Ralph Palumbo. I  
14 have Brian Cannon and Andrea Roberts from the Quinn Emanuel  
15 firm, and they will be speaking for Motorola. And Mr.  
16 McCune, from my office, is also on the line.17 MR. HARRIGAN: We have others on the line, Your  
18 Honor. My partners, Mr. Wion and Mr. Cramer, Mr. Killough  
19 and Mr. Culbert from Microsoft, and Mr. Pritikin from the  
20 Sidley Firm.21 THE COURT: All right. I would ask that we only have  
22 one person speak for each party, since we have a court  
23 reporter present and it's going to assist her in keeping  
24 track of who is who. If you'll introduce yourself when you  
25 start, and then she'll be able to recognize your voice after

1 that.

2 Do either of the parties have anything that they wish to  
3 add to their briefing, which we've had an opportunity to  
4 review and have some preliminary thoughts on about how to  
5 proceed?

6 MR. HARRIGAN: Not here, Your Honor. We have nothing  
7 to add.

8 THE COURT: Mr. Palumbo?

9 MR. PALUMBO: Mr. Cannon will be speaking.

10 MR. CANNON: Your Honor, Brian Cannon for Motorola.  
11 Nothing to add to the papers at this time.

12 THE COURT: All right. Let me start on the easier of  
13 these two issues, then.

14 As I understand it, Microsoft wants its bond to be  
15 released, and Motorola opposes that. I guess that I would  
16 start with this, by asking you to go back and look at why  
17 that bond was posted in the first place, and that was the  
18 request by Microsoft for a temporary restraining order, which  
19 was later converted into a preliminary injunction. That was  
20 a bond that was posted in connection with that preliminary  
21 injunction, and the situation in regards to the injunction  
22 was, it prohibited Motorola from enforcing an injunction it  
23 might receive in Germany.

24 I have subsequently discharged that preliminary  
25 injunction, having found that it was no longer necessary, and

1 therefore it seems to me that the proper resolution of this  
2 question is, then, since the purpose of the bond was securing  
3 the court's anti-suit injunction, and the purpose of that was  
4 to determine if Motorola could obtain injunctive relief under  
5 the H.264 standard and the 802.11 standard essential patents,  
6 it seems to me that we have now determined that Motorola is  
7 not entitled to injunctive relief for H.264 or 802.11.

8 And the court has further set the royalty rates to be  
9 imposed under the license for those; thus, the purpose of the  
10 anti-suit injunction was no longer necessary, and the  
11 injunction was no longer necessary, and therefore the bond is  
12 no longer necessary. So I am releasing the \$100 million  
13 security bond at this time.

14 Let me then take you to what seems to be more of your real  
15 battleground these days, which is a discovery dispute.

16 I am obligated to express my displeasure that you all  
17 seemed to have treated my discovery schedule as a suggestion  
18 and not a court order.

19 I set the discovery schedule in this matter on March 14th  
20 of 2013. Somewhat promptly, three weeks later, Motorola  
21 apparently notes a 30(b)(6) deposition. On May 1st,  
22 Microsoft designates Mr. Davidson to be a witness in response  
23 to the 30(b)(6) motion. On May 9th, apparently that  
24 deposition is taken. On May 16th, according to your  
25 submissions to the court, Microsoft says that it is going to

1 provide no further 30(b)(6) witnesses. Meaningfully to,  
2 apparently, no one other than the court, on May 20th, fact  
3 discovery closed.

4 Since then you've had a May 22nd deposition of  
5 Mr. Roberts, and a May 30th deposition of Daly. I'm not sure  
6 if Roberts and Daly are a Mr. or a Ms., so if I've got the  
7 genders wrong, I apologize.

8 On June 11th, apparently you met and conferred. On June  
9 17th, you contacted the court and asked to file your letter  
10 briefs, and those were filed on June 18th.

11 That is significantly out of compliance with the discovery  
12 schedule that was set in this matter, and, frankly, on that  
13 basis alone, I'm inclined to say that neither of you are  
14 getting anything that you want.

15 However, because we would rather resolve matters on the  
16 merits rather than on the arbitrariness of the court, I have  
17 looked at the pleadings. Microsoft does not respond to  
18 Motorola's contention that there are at least two areas where  
19 there was not a witness responsive to the 30(b)(6) notice, at  
20 least based on the pleadings you've given me.

21 First is a witness who could categorically testify of any  
22 consideration of moving the distribution center prior to  
23 mid-January 2012. The only witness who seems to have spoken  
24 to that said they were not personally aware of it, and it  
25 seems to me there's a difference between saying, "I'm

1 personally not aware of it," and a witness who represents the  
2 entire company who will say it wasn't under consideration.

3 Secondly, Motorola notes that no witness was able to  
4 respond to the item in the 30(b)(6) designation concerning  
5 what lawsuits against Microsoft were pending in Germany. And  
6 I've added the timeframe of 2011, 2012. Therefore, I'm going  
7 to order that Motorola is permitted a two-hour deposition  
8 from a witness who can respond to each of those two discrete  
9 issues.

10 That leaves open the interesting question of the sword and  
11 the shield, as you all have taken to calling it, and,  
12 frankly, there seems to be a certain amount of lack of condor  
13 in the briefing that you've provided me.

14 The representation is made by Microsoft that there was a  
15 clear, definitive statement by the Microsoft witnesses that  
16 there was -- it was their decision, let's put it that way, to  
17 move the distribution center. And I'm noting on page 3 of  
18 Mr. Harrigan's letter, found in the docket at 704, which  
19 reads, "Davidson's and Roberts' deposition testimony  
20 demonstrates that there is nothing of consequence remaining  
21 to discover. They made the decision to relocate."

22 That's a flat out, unambiguous declarative statement.

23 The question to the court, then, is, how do you reconcile  
24 that with the deposition transcripts in this matter? Let's  
25 start with Mr. Davidson.

1 On page 61, he seems to be the low man on the totem pole.  
2 What he says is, in response to a question on page 56, "And  
3 who -- who ultimately made the decision to move the  
4 facilities?

5 "ANSWER: It would have been me; Owen Roberts, my boss; and  
6 his boss, Brian Tobey."

7 That would be consistent with the statement in the  
8 Microsoft briefing

9 However, if you go to Mr. Roberts, who is identified as  
10 Mr. Davidson's superior, you get a much different answer. On  
11 pages 40 and 41, the following took place:

12 The question was asked, "And then the decision to relocate  
13 the facility out of Germany, do you know who ultimately had  
14 sign-off authority on that decision?

15 "ANSWER: That was -- I would rephrase the point to say it  
16 wasn't a decision to move it. We were told, based on the  
17 litigation, we had to move the facility.

18 "QUESTION: So I guess just to clarify, I understand your  
19 team -- your team did not make the decision --

20 "ANSWER: Correct.

21 "QUESTION: -- to relocate out of Germany?

22 "ANSWER: No. We were not planning to move warehouses in  
23 Europe.

24 "QUESTION: That was a decision that your team was informed  
25 by legal counsel?

1       "ANSWER:   Correct.

2       "QUESTION:   Okay.   And who on the legal team made the  
3            decision to move?

4       "ANSWER:   Shelley McKinley was my contact."

5           The court is unable to reconcile the statement in  
6            Microsoft's briefing that Davidson and Roberts made the  
7            decision to relocate with the direct deposition testimony of  
8            the witness.   That's either a lack of understanding of the  
9            witness's testimony, an effort to characterize the testimony,  
10           or an outright misstatement, but it's going to cause the  
11           court to enter the following ruling:

12           I will allow the deposition of two hours of Ms. McKinley,  
13           who, according to the deposition testimony of Microsoft, was  
14           the person who made the decision.   You can't simply say, one,  
15           we made the decision, when your own witnesses don't testify  
16           contrary to that, and secondly, you can't say, "The law  
17           department made us do it," without opening yourself open to  
18           examination of what the law department did.

19           I will say that the list of questions that Motorola seeks  
20           to ask is much too broad, and it seems to have little  
21           significance to the question at hand.   But since Microsoft  
22           has opened the door to why the law department told the  
23           business people that they were moving the warehouse, it seems  
24           to me, as a matter of fairness, that Motorola is permitted to  
25           examine that question.

1                   So in summary, I've authorized a two-hour deposition on a  
2 question that I assume should, frankly, not take more than  
3 about ten minutes. One, a witness who can categorically say,  
4 as the witness has implied, that there was no consideration  
5 of moving the distribution center prior to mid-January of  
6 2012, and someone who can discuss other patent litigation  
7 lawsuits pending in Germany in the 2011, 2012 range, and a  
8 second two-hour deposition of Ms. McKinley or someone else in  
9 the law department who will explain the reasons why the law  
10 department made the decision that the distribution center  
11 needed to be moved.

12                   So that will be the ruling of the court on your letter  
13 motions.

14                   Mr. Harrigan, any questions?

15                   MR. HARRIGAN: No, Your Honor. I -- and I'm not  
16 saying this to argue with your ruling at all, I'm not arguing  
17 with it, but I do want to simply point out that the same  
18 witness, Mr. Roberts, was invited later in the deposition to  
19 clarify, and that was the word, I believe. "I want to make  
20 sure I'm understanding your testimony," was the question, and  
21 he unequivocally testified later in that deposition that it  
22 was a decision made by the business people and not the legal  
23 people.

24                   THE COURT: Okay. We read --

25                   MR. HARRIGAN: But I agree with you that the first

1 quote is something that should have been addressed.

2 THE COURT: Well, we read both of them, and it seems  
3 to me that, at best, it creates an ambiguity in his  
4 testimony, and if the law department wants to say, "We don't  
5 have any authority over the business people, all we can do is  
6 explain the consequences of their actions," you're going to  
7 be living with that at trial. But that's what he says in his  
8 deposition, and that's what the court is going to rely on.

9 MR. HARRIGAN: I understand.

10 THE COURT: Mr. Cannon?

11 MR. CANNON: Nothing from me, Your Honor. Thank you.

12 THE COURT: All right. Counsel, you have motions  
13 coming up, you have dispositive motions coming up, and you  
14 have a trial coming up. I would urge you to get this stuff  
15 done promptly, because it's not going to change the court's  
16 schedule, and it's not going to impact your trial date.

17 I think that covers all of the areas.

18 There's a discussion of efforts to mitigate damages, and,  
19 frankly, I did not understand what Motorola was trying to say  
20 in regards to that. It seems to me that, based on the  
21 testimony, the record is that Microsoft made the decision to  
22 move in response to what it perceived to be the legal  
23 situation in Germany, and that really is the question of  
24 mitigating damages.

25 So if you think that I've missed something in regards to

1 that, I'm happy to talk to you, but I think you have covered  
2 that at the present time.

3 So that will complete the sequence of events or areas of  
4 questioning that Motorola has raised today.

5 Anything further, counsel?

6 MR. HARRIGAN: Not here, Your Honor.

7 MR. CANNON: No, Your Honor.

8 THE COURT: All right. Thank you. We'll be in  
9 recess.

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(THE PROCEEDINGS CONCLUDED.)

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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 26th day of June 2013.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter

## **EXHIBIT L**

**Filed Under Seal**

# **EXHIBIT M**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION, )  
Plaintiff, ) CASE NO. C10-1823JLR  
v. ) SEATTLE, WASHINGTON  
MOTOROLA, INC., et al., ) July 31, 2013  
Defendant. ) MOTION HEARING  
)  
)

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES L. ROBART  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiff: ARTHUR HARRIGAN  
RICHARD CEDEROTH  
ANDREW CULBERT  
DAVID PRITIKIN  
CHRISTOPHER WION

For the Defendant: KATHLEEN SULLIVAN  
WILLIAM PRICE  
PHILIP McCUNE  
ANDREA ROBERTS  
CHERYL BERRY  
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1 Are you still asserting a ripeness affirmative defense?

2 MS. SULLIVAN: Your Honor, we are asserting ripeness  
3 and unclean hands as equitable defenses that we don't think  
4 Your Honor should determine on summary judgment now, because  
5 the very same facts that are at issue about the parties' good  
6 faith goes to whether Microsoft pulled the trigger too soon.

7 I understand, Your Honor. I'm not defying your decision  
8 on the motion to dismiss. You absolutely said there was no  
9 basis for dismissal on Article III ripeness found earlier.  
10 We accept that opinion.

11 What we're suggesting, Your Honor, is that the good-faith  
12 inquiry is intertwined with the ripeness and good-faith  
13 inquiry. So we would still like to preserve those, Your  
14 Honor, unless Your Honor -- one way you might preserve them,  
15 Your Honor, is postpone equitable defenses until after the  
16 trial. That's one option.

17 THE COURT: Well, you're asking eight people to do a  
18 lot in a relatively short period of time, and, frankly, I'm  
19 not sure that the marginal -- there are other ways to deal  
20 with the equitable arguments you want to make other than  
21 having, you know, jury instructions on ripeness and unclean  
22 hands. That's --

23 MS. SULLIVAN: Understood, Your Honor. Well, those  
24 can be postponed until after trial. The one thing we do  
25 think needs to stay in, Your Honor, and I think yesterday's

1 standard essential patents, and we believe there is and  
2 should be a categorical rule that you don't do that, but  
3 without reaching that question, clearly on the facts of this  
4 case as this has unfolded and the timeline that exists here,  
5 they were engaged in holdup. The court could find that, we  
6 think, as Mr. Harrigan argued yesterday, as a matter of  
7 summary judgment, but there's no basis for removing that from  
8 the case.

9 Let me turn to a couple other points that were made by  
10 Ms. Sullivan in the course of her arguments.

11 Let me come back for just a moment to the Marvell issue.  
12 So in June of 2011, Microsoft had asked Marvell to get the  
13 license. Now, this didn't just come out of the blue. This  
14 isn't something that Marvell, on its own, decided to do. It  
15 was done at the specific request of Microsoft, because having  
16 a license for the chip that substantially embodied the wi-fi  
17 in the 802.11 capabilities would have provided Microsoft the  
18 ability to continue to sell the Xbox console regardless of  
19 what would have happened with their continuing law  
20 enforcements. There would have been an exhaustion, since  
21 that would have been created.

22 Ms. Sullivan told you 10 or 15 minutes ago that Motorola  
23 came back and offered a license to Marvell, but she left out  
24 one very, very important fact, and that is, the license that  
25 they provided to Marvell had a specific exclusion in it for

# **EXHIBIT N**



August 31, 2005

**VIA OVERNIGHT MAIL**

Mr. Paul Reinhardt  
Executive Director  
SD Card Association  
c/o Global Inventures, Inc.  
2400 Camino Ramon  
Suite 375  
San Ramon, CA 94583

Subject: Microsoft Contribution to SD Card Association

Dear Mr. Reinhardt:

Microsoft has developed an implementation of the File Allocation Table file system for organizing and managing computer data files stored on digital storage media ("FAT32 File System"), and technology that provides long file names support in the FAT32 File System ("Long File Name Support"). Microsoft has also developed a FAT32 File System specification ("Microsoft FAT32 Specification"); a Long File Name Support specification which may consist of portions of the Microsoft FAT32 Specification specifically identified by Microsoft as comprising the long file name features ("Microsoft LFN Specification") and a test specification ("Microsoft Compliance Test Specification") which describes how a device or process can be tested for compliance with the technical requirements relating to the Microsoft FAT32 Specification. The Microsoft FAT32 Specification, Microsoft LFN Specification and the Microsoft Compliance Test Specification are collectively referred to herein as the "Microsoft Contribution."

Microsoft desires to provide to the SD Card Association ("SDA") the Microsoft Contribution for use in developing and publishing SDA file system specifications and/or SDA test specification ("SDA Specification") that may incorporate the Microsoft Contribution and/or portions thereof. Pursuant to the "copyright issues" portion of this letter set forth below, SDA may incorporate all, any portion or none of the Microsoft Contribution into an SDA Specification, in any manner it determines in its sole discretion. Without limiting SDA's rights, but for avoidance of doubt, SDA may make the Microsoft LFN Specification and/or the Microsoft Compliance Test Specification an optional portion of any SDA Specification, incorporate portions thereof as a separate specification from other FAT32 File System specifications and/or elect not to incorporate such portions thereof into an SDA Specification. In the event that SDA elects to incorporate any portion of the Microsoft Contribution as an optional portion of an SDA Specification, Microsoft agrees to provide the RAND license assurance set forth below for those patent claims which are required to implement such optional portions.

The Microsoft Contribution is made under the following considerations/conditions:

**Essential Patent Claims Disclosure:** As required by, and defined in the SDA Intellectual Property Policy, Microsoft hereby discloses that it is aware of the following Patents that have essential patent claims with respect to the Microsoft Contribution. At or before



such time as SDA adopts an SDA Specification incorporating some or all the Microsoft Contribution, Microsoft will provide an updated Essential Patent disclosure relating to any finally-adopted SDA Specifications:

- U.S. Patent No. 5,579,517, entitled "Common Name Space for Long and Short Filenames", issued 11/26/1996 to Reynolds, *et al.*
- U.S. Patent No. 5,758,352, entitled "Common Name Space for Long and Short Filenames, issued 5/26/1998 to Reynolds, *et al.*
- U.S. Patent No. 6,286,013, entitled "Method and System for Providing a Common Name Space for Long and Short File Names in an Operating System", issued 9/4/2001 to Reynolds, *et al.*
- DE Patent No. 618540, entitled "Common Name Space for Long and Short Filenames" issued to Reynolds, *et al.*
- FR Patent No. 618540, entitled "Common Name Space for Long and Short Filenames", issued to Reynolds, *et al.*
- GB Patent No. 618540, entitled "Common Name Space for Long and Short Filenames", issued to Reynolds, *et al.*
- Pending Canadian Application Ser. No. 2120461, entitled "Common Name Space for Long and Short Filenames", filed 3/31/1994.
- Pending Japanese Application Ser. 1994/064808, entitled "Common Name Space for Long and Short Filenames", filed 4/01/1994.

License assurance: Microsoft is not aware at this time of any other Essential Patents it holds that are necessary to implement the Microsoft Contribution. Pursuant to Section 5(ii) of the SDA Intellectual Property Policy, Microsoft commits to the SDA that Microsoft will license its Essential Patent Claims in a non-discriminatory fashion and under reasonable terms and conditions to all SDA Member and non-SDA-Member licensees, solely to the extent required for such entities to implement finally-adopted SDA Specifications. Microsoft will grant such licenses to SDA Members and non-SDA-Members pursuant to separate agreements. Vendors should seek their own legal counsel to assess whether products implement the patented technology because each implementation may be unique. As stated above, Microsoft is willing to make licenses available for products implementing the Microsoft LFN Specification on a RAND, royalty-bearing basis. To the extent Microsoft has patent claims essential to implementing the Microsoft FAT32 Specification, Microsoft will offer licenses to such patent claims on a RAND, royalty-free basis for products conforming to the specification. To the extent that a company makes or distributes preformatted media cards that themselves (a) do not implement the Microsoft LFN Specification, and (b) do not contain or use any long file names, Microsoft will not assert patent claims essential to implementing the Microsoft LFN Specification against those cards. No other license or agreement not to assert any other patent claim is granted or made, express or implied or by waiver, estoppel, or otherwise.

Copyright issues:

- a) *Ownership.* Microsoft retains ownership of its copyrights in and to the Microsoft Contribution. Nothing in this letter or in SDA's Intellectual Property Policy shall be construed as an assignment of such copyrights to SDA or any other person or entity.



Microsoft acknowledges and will not challenge SDA's assertion of copyright ownership according to SDA's Intellectual Property Policy of final SDA specifications subject to the underlying copyrights in Microsoft's Contribution and the terms hereof.

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Please be advised that Microsoft is not providing any warranties of any kind (express or implied) with regard to this copyrighted material.

Please let us know if you have any questions or comments regarding this contribution. We look forward to our continued working relationship with the SDA and its members.

Sincerely,

Vishal Ghotge  
Windows Core File Services  
Microsoft Corporation

Enclosure

Cc: James Vickery, Esq. (via e-mail without enclosure)  
SD Card Association Board of Directors (via e-mail without enclosure)

# **EXHIBIT O**

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## Microsoft Makes Strategic Changes in Technology and Business Practices to Expand Interoperability

Feb. 21, 2008

New interoperability principles and actions will increase openness of key products.

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**REDMOND, Wash. — Feb. 21, 2008** — Microsoft Corp. today announced a set of broad-reaching changes to its technology and business practices to increase the openness of its products and drive greater interoperability, opportunity and choice for developers, partners, customers and competitors.

Specifically, Microsoft is implementing four new interoperability principles and corresponding actions across its high-volume business products: (1) ensuring open connections; (2) promoting data portability; (3) enhancing support for industry standards; and (4) fostering more open engagement with customers and the industry, including open source communities.

"These steps represent an important step and significant change in how we share information about our products and technologies," said Microsoft chief executive officer Steve Ballmer. "For the past 33 years, we have shared a lot of information with hundreds of thousands of partners around the world and helped build the industry, but today's announcement represents a significant expansion toward even greater transparency. Our goal is to promote greater interoperability, opportunity and choice for customers and developers throughout the industry by making our products more open and by sharing even more information about our technologies."

According to Ray Ozzie, Microsoft chief software architect, the company's announcement reflects the significance that individuals and businesses place upon the ease of information-sharing. As heterogeneity is the norm within enterprise architectures, interoperability across applications and services has become a key requirement.

"Customers need all their vendors, including and especially Microsoft, to deliver software and services that are flexible enough such that any developer can use their open interfaces and data to effectively integrate applications or to compose entirely new solutions," said Ozzie. "By increasing the openness of our products, we will provide developers additional opportunity to innovate and deliver value for customers."

"The principles and actions announced today by Microsoft are a very significant expansion of its efforts to promote interoperability," said Manfred Wangler, vice president, Corporate Research and Technology, Software and Engineering, Siemens. "While Microsoft has made considerable progress on interoperability over the past several years, including working with us on the Interoperability Executive Customer Council, today's news take Microsoft's interoperability commitment to a whole new level."

"The interoperability principles and actions announced today by Microsoft will benefit the broader IT community," said Thomas Vogel, head, Information Management, Novartis Pharma. "Ensuring open connections to Microsoft's high-volume products presents significant opportunities for the vast majority of software developers, which will help foster greater interoperability, opportunity and choice in the marketplace. We look forward to a constructive, structured, and multilateral dialogue to ensure stakeholder-driven evolution of these principles and actions."

The interoperability principles and actions announced today apply to the following high-volume

### Press Contacts

**Rapid Response Team**  
Waggener Edstrom Worldwide  
(503) 433-7070

### Related Links

**Feature Stories:**  
[New Microsoft Interoperability Principles Ensure Open Connections and Promote Data Portability](#) – Feb. 21, 2008

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[Microsoft Interoperability Virtual Pressroom](#)  
[Microsoft Interoperability Web site](#)

**Transcript:**  
[Press Conference Call on Microsoft Interoperability Announcement](#) – Feb. 21, 2008

### Mentioned in this Story

PEOPLE

 **Steve Ballmer**  
Chief Executive Officer

 **Brad Smith**  
General Counsel and Executive Vice President, Legal and Corporate Affairs

Microsoft products: Windows Vista (including the .NET Framework), Windows Server 2008, SQL Server 2008, Office 2007, Exchange Server 2007, and Office SharePoint Server 2007, and future versions of all these products. Highlights of the specific actions Microsoft is taking to implement its new interoperability principles are described below.

- **Ensuring open connections to Microsoft's high-volume products.** To enhance connections with third-party products, Microsoft will publish on its Web site documentation for all application programming interfaces (APIs) and communications protocols in its high-volume products that are used by other Microsoft products. Developers do not need to take a license or pay a royalty or other fee to access this information. Open access to this documentation will ensure that third-party developers can connect to Microsoft's high-volume products just as Microsoft's other products do.
  - As an immediate next step, starting today Microsoft will openly publish on MSDN over 30,000 pages of documentation for Windows client and server protocols that were previously available only under a trade secret license through the Microsoft Work Group Server Protocol Program (WSPP) and the Microsoft Communication Protocol Program (MCPP). Protocol documentation for additional products, such as Office 2007 and all of the other high-volume products covered by these principles, will be published in the upcoming months.
  - Microsoft will indicate on its Web site which protocols are covered by Microsoft patents and will license all of these patents on reasonable and non-discriminatory terms, at low royalty rates. To assist those interested in considering a patent license, Microsoft will make available a list of specific Microsoft patents and patent applications that cover each protocol.
  - Microsoft is providing a covenant not to sue open source developers for development or non-commercial distribution of implementations of these protocols. These developers will be able to use the documentation for free to develop products. Companies that engage in commercial distribution of these protocol implementations will be able to obtain a patent license from Microsoft, as will enterprises that obtain these implementations from a distributor that does not have such a patent license.
- **Documenting how Microsoft supports industry standards and extensions.** To increase transparency and promote interoperability, when Microsoft supports a standard in a high-volume product, it will work with other major implementers of the standard toward achieving robust, consistent and interoperable implementations across a broad range of widely deployed products.
  - Microsoft will document for the development community how it supports such standards, including those Microsoft extensions that affect interoperability with other implementations of these standards. This documentation will be published on Microsoft's Web site and it will be accessible without a license, royalty or other fee. These actions will allow third-party developers implementing standards to understand how a standard is used in a Microsoft product and foster improved interoperability for customers. Microsoft will make available a list of any of its patents that cover any of these extensions, and will make available patent licenses on reasonable and non-discriminatory terms.
- **Enhancing Office 2007 to provide greater flexibility of document formats.** To promote user choice among document formats, Microsoft will design new APIs for the Word, Excel and PowerPoint applications in Office 2007 to enable developers to plug in additional document formats and to enable users to set these formats as their default for saving documents.
- **Launching the Open Source Interoperability Initiative.** To promote and enable more interoperability between commercial and community-based open source technologies and Microsoft products, this initiative will provide resources, facilities and events, including labs, plug fests, technical content and opportunities for ongoing cooperative development.
- **Expanding industry outreach and dialogue.** An ongoing dialogue with customers, developers and open source communities will be created through an online Interoperability Forum. In addition, a Document Interoperability Initiative will be launched to address data exchange between widely deployed formats.

The Interoperability Executive Customer (IEC) Council, an advisory organization established in 2006 and consisting mainly of chief information and technology officers from more than 40 companies

and government bodies around the world, will help guide Microsoft in its work under these principles and actions. The full text of Microsoft's new Interoperability Principles, and a full list of the actions Microsoft is taking, can be found on [Microsoft's Interoperability site](#).

The interoperability principles and actions announced today reflect the changed legal landscape for Microsoft and the IT industry. They are an important step forward for the company in its ongoing efforts to fulfill the responsibilities and obligations outlined in the September 2007 judgment of the European Court of First Instance (CFI).

"As we said immediately after the CFI decision last September, Microsoft is committed to taking all necessary steps to ensure we are in full compliance with European law," said Brad Smith, Microsoft general counsel. "Through the initiatives we are announcing, we are taking responsibility for implementing the principles in the interoperability portion of the CFI decision across all of Microsoft's high-volume products. We will take additional steps in the coming weeks to address the remaining portion of the CFI decision, and we are committed to providing full information to the European Commission so it can evaluate all of these steps."

#### About Microsoft

Founded in 1975, Microsoft (Nasdaq "MSFT") is the worldwide leader in software, services and solutions that help people and businesses realize their full potential.

#### For more information, press only:

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[rrt@waggeneredstrom.com](mailto:rrt@waggeneredstrom.com)

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- [Second Community Technology Preview for Windows Embedded Standard 8 Now Available](#). June 06, 2012
- [Intelligent Systems Open Doors for Vertical Solution Providers](#). May 31, 2012
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# **EXHIBIT P**

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ARTHUR W. HARRIGAN, JR.

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April 4, 2012

**VIA EMAIL**

Ralph Palumbo  
Summit Law Group  
315 Fifth Ave. South, Suite 1000  
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**VIA EMAIL**

Jesse J. Jenner  
Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704

RE: *Microsoft v. Motorola – 10-1823*  
Motorola's Motion for Summary Judgment

Dear Ralph and Jesse:

Motorola's summary judgment filing of Friday, March 30<sup>th</sup> impermissibly includes references to settlement discussions that the parties explicitly agreed would not be disclosed to the court under Federal Rule of Evidence 408 and the parties' non-disclosure agreement dated November 12, 2010 (the "NDA"). To ensure that the parties' settlement communications remained confidential, Microsoft requested Motorola to sign a non-disclosure agreement confirming in writing that the substance of the parties' conversations would be protected from disclosure under FRE 408 and the non-disclosure provisions of the NDA. In the NDA, Motorola agreed that "documents, discussion or correspondence constituting or relating to the subject matter of the settlement discussions shall be deemed and kept strictly confidential. . . ." (NDA, ¶ 4). Motorola also agreed that "No Party to this Agreement shall use any documents or information contained or exchanged in any such meeting, discussion or correspondence in any adversarial proceeding. . . ." (NDA, ¶ 3).

In direct violation of FRE 408 and the NDA, Motorola's March 30<sup>th</sup> court filing discloses and/or discusses the content of documents and communications that were exchanged between the parties in their effort to explore settlement of the litigation. (See Motorola Brief, pp. 1:12-16; 2:2-3; 7:1-12; 8:4-6, 11-17 & n. 7; 20:6-9 & n. 16; 22 n. 19; Exhibit 26; and Taylor Decl. ¶¶ 13, 14, 15, and 17.) Indeed, Motorola's brief acknowledges the genesis of those communications, stating, "Microsoft assured Motorola that it wanted to engage in licensing negotiations and reach a settlement. To do this, Microsoft encouraged Motorola to put its strongest patents on the table so that Microsoft could assess the value of Motorola's portfolios." (See Motorola Brief, p. 1.)

We request that Motorola immediately comply with the NDA by withdrawing its summary judgment brief. If Motorola desires to file a revised motion, Motorola must remove the

Ralph Palumbo  
Jesse J. Jenner  
April 4, 2012  
Page 2

content of any of the parties' settlement discussions. In light of the seriousness and urgency of this matter, please advise by 5 p.m. today (PDT) whether Motorola intends to comply with FRE 408 and the NDA and withdraw its March 30<sup>th</sup> summary judgment motion.

Very truly yours,



DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

Arthur W. Harrigan, Jr.

AWH:lb